

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NORTH CAROLINA
WESTERN DIVISION

NO. 5:06-HC-2205-BR

UNITED STATES OF AMERICA

v.

THOMAS SHANE MATHERLY

ORDER

On 9 January 2009, respondent, by and through his appointed counsel, filed a motion for his release from custody in light of the Fourth Circuit's opinion affirming this court's determination that 18 U.S.C. § 4248 is unconstitutional. Subsequently, the Supreme Court stayed the Fourth Circuit's issuance of the mandate pending disposition of the petition for a writ of certiorari. The Court granted the petition, reversed the judgment of the Fourth Circuit, and remanded to that court for further proceedings. United States v. Comstock, 130 S. Ct. 1949 (2010). Arguments before the Fourth Circuit are currently calendared for September 2010. In light of the current posture of the case, the motion is DENIED WITHOUT PREJUDICE.

On 20 August 2009, respondent filed a *pro se* motion entitled "Petition for a Limited Stay or Temporary Injunction for the 18 U.S.C. § 4248 Certification Proceedings Pursuant to Fed. R. Civ. P. 62(c)." In part, respondent appears to seek a stay of proceedings under § 4248 on behalf of other, unidentified individuals. Respondent has already been certified as sexually dangerous and is being detained pending appellate review of the constitutionality of the Adam Walsh Act's civil commitment provisions. Thus, as an initial matter, respondent lacks standing to assert the instant claim for equitable relief because, having already been certified, respondent cannot establish the likelihood of future injury

to himself absent a stay of further certification proceedings. To the extent that respondent seeks his own release, the motion is DENIED WITHOUT PREJUDICE in light of the current posture of the Comstock case.

This 30 August 2010.

A handwritten signature in green ink, appearing to read "W. Earl Britt", is positioned above a horizontal line.

W. Earl Britt
Senior U.S. District Judge